

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0185P
Income Tax
For the Years 1998-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is in the business of performing testing services and upgrading construction of storage tanks to comply with environmental laws and regulations. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional income tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this finding is based on the information in the file.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts

and circumstances of each taxpayer.

This taxpayer has filed Indiana income taxes since 1991. During the period of the audit, the taxpayer ignored the law and departmental instructions for the payment of Indiana corporate income taxes. The taxpayer did not report any withholding on out of state contractors as clearly required by the law. Also, it did not file a return or pay taxes for the 2001 year. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

KMA/JMM/JMS--032606